

## **REMARKS**

Claims 1-26 are pending in the application. Claims 1-23, 25 and 26 are rejected. Claims 1, 2, 7, 13-23, 25 and 26 have been canceled. Claims 3, 4 and 8-12 and have been amended for dependency and clarity. Claim 24 has been amended to correct a spelling error. New claims 27-42 have been added. No new matter is submitted with these amendments.

### **Reply to the Remarks Regarding the Rejection of Claims 13-17 and 22 under 35 U.S.C. § 112, second paragraph**

The Examiner has rejected claims 13-17 and 22 as being indefinite for failing to particularly point out and distinctly claims the subject matter which applicant regards as the invention. Specifically, the Examiner states –

In claim 13, it is unclear what applicant means by “co-processed composition of claim 1 wherein the hot temperature process tolerance is characterized by and an ability of a conventional brown or tomato sauce containing the co-process composition to have less than a 20% drop in viscosity. . . .” this characteristic does not further limit the composition of claim 1. Applicant should draft the claim using clear, positive, meaningful language. For example, Applicant could recite “A brown or tomato sauce comprising the co-processed composition of claim 1 wherein the brown sauce or tomato sauce has a peak viscosity etc. . . .” Suitable correction is required in claims depending from claim 13. Similarly in claim 22, wherein applicant recites that the brown sauce emulsification is maintained for 24 hours after cooking does not further limit claim 1, applicant should claim the brown sauce comprising the co-processed composition of claim 1 and then recite that that the sauce remains emulsified for 24 hours.

Claims 13-17 and 22 have been canceled. Accordingly, the Examiner’s rejection of claims 13-17 and 22 as being indefinite under 35 U.S.C. § 112, second paragraph is now moot.

### **Reply to the Rejection of Claims 1, 3-5, 8, 11, 12, 19-21, 23, 25 and 26 under 35 U.S.C. § 102(b)**

The Examiner has rejected claims 1, 3-5, 8, 11, 12, 19-21, 23, 25 and 26 as being anticipated by U.S. Patent No. 5,849,351 to Higgins *et al.* (“Higgins”). Specifically, the Examiner states –

Higgins et al teach a modified cornstarch and rice flour co-processed composition in a ratio of 10:1 to 1:1, which can be used as a coating or batter. The modified

starch is a cornstarch, which has been commercially modified by known cross-linking and chemical substitution process such as to product acid hydrolyzed, phosphate modified and hydroxyalkylsubstitued starches. When using the co processed starch and flour in a coating composition the coating is not detectable and provides a clear coating. [Note Column 4, lines 10-65]. With respect to applicant's limitations regarding opacity, and viscosity these properties would be inherent properties of the co-processed starch and flour as described by Higgins '351. With respect to applicant's process claims of using the co-processed starch and flour composition as a thickener or batter this has been fully taught by Higgins. Applicant is further reminded that it has been well established by the Courts that a new use for an old composition is not patentable.[Note the case law of In re Thuauu]

For the following reasons, applicants respectfully traverse the Examiners rejection of claims 1, 3-5, 8, 11, 12, 19-21, 23, 25 and 26 as being anticipated by Higgins.

Referring to Higgins therein is disclosed a water dispersible coating composition for fat-fried foods. The coating composition includes a combination of modified cornstarch and rice flour in certain weight proportions (col. 3, lines 54-58; col. 4, lines 10-12). The weight proportion of modified cornstarch to rice flour can range from 10:1 to 1:1, more preferably from 10:1 to 4:1 (col. 3, lines 65-67; col. 4, lines 49-61). The modified cornstarch is preferably a blend of more than one modified cornstarch (col. 4, lines 21-27).

Higgins notes that the blend of modified cornstarch and rice flour provides clarity in the coating, as well as enhances the texture of the coated food product (col. 4, lines 28-37). Without the added flour, the modified starch provides a less clear coating and a less desirable texture (col. 4, lines 37-44).

In addition to the modified cornstarch and rice flour, the coating composition of Higgins can include dispersing agents (*e.g.*, gums and/or hydrocolloids), acid salt(s), a leavening agent such as sodium bicarbonate, a dextrin for form formation, a high amylose starch for texture, and vegetable oil for controlling dust (col. 4, line 62 – col. 5, line 35). The composition can be prepared for direct coating use by dispersing in an aqueous medium in an amount of 20 to 80 weight % in the aqueous medium (col. 5, lines 36-39).

Higgins does not provide detail as to the type of modified corn starch used other than to state that the modified corn starch is commercially available, and such commercially available modified corn starches can be commercially modified by crosslinking, acid hydrolysis, phosphate modification, and hydroxyalkyl substitution (col. 4, lines 12-17). Higgins provides examples of

such commercially available modified cornstarches in its Examples 1 and 2. The three starches listed therein included National 6997:118 (a modified starch), Purecote B790 (a stabilized starch) and Puregel B992 (a stabilized starch). Higgins does not teach or suggest modifying the high amylose starch. Higgins also does not teach or suggest the use of waxy starches.

Finally, Applicants note that the Examiner repeatedly refers to a starch/flour **blend** as a co-processed composition. Contrary to the Examiner's suggestion, Higgins does not teach or suggest a **co-processed** starch/flour composition as **defined at p. 7, lines 23-24** of the present application. Instead, Higgins merely suggests blending the flour and starch together. By co-processing the modified starch/flour blend, cooked starch/flour particles or powders are formed. In particular, pregelatinized dry powders or particles of starch/flour are formed that are suitable for 'ready-for-use' compositions (see Example 1, p. 13, lines 15-19 of the present application).

Claims 1, 19-21, 23, 25 and 26 have been canceled. Claims 3, 4, 8, 11 and 12 have been amended for dependency and clarity. New claims 27-42 have been added. New independent composition claim 27 is directed towards a co-processed starch/flour composition or particle having a moisture content of about 3% to about 12% by weight of the composition or particle, with the percentage of starch in the particle being greater than the percentage of flour. Higgins does not teach or suggest such a composition or particle. Higgins specifically does not teach or suggest a starch/flour particle having the moisture content of the present invention. Accordingly, new composition claims 27-33, as well as claims 3-5, 8-12 and 24, which depend from claim 27, are novel over Higgins.

It is believed that these remarks overcome the Examiner's rejection of claims 1, 3-5, 8, 11, 12, 19-21, 23, 25 and 26 as being anticipated under 35 U.S.C. § 102(b) by Higgins. Withdrawal of the rejection is respectfully requested.

#### **Reply to the Rejection of Claims 6 and 7 under 35 U.S.C. § 103(a)**

The Examiner has rejected claims 6 and 7 as being unpatentable over U.S. Patent No. 5,849,351 to Higgins *et al.* ("Higgins"). Specifically, the Examiner states –

Higgins *et al.* teach providing a co-processed starch and flour composition, the co-processed starch and flour would inherently provide thickening, opacity, process tolerance, cold and hot temperature stability, emulsification and instant viscosity properties in food.

Higgins et al. teach that any commercially available modified starch can be used. The modified starch is modified by known process such as cross-linking and chemical substitution process to product acid hydrolyzed phosphate modified and hydroxyalkylsubstituted starched. To use a waxy maize plant that is heterozygous for the sugary-2-allele or plant of a wxsu2 (homozygous) genotype, and translocations, inversion, mutants and variations thereof would have been obvious because it has been well recognized by modified starch producers which plant types produce the best type of waxy maize starch and to select plant varieties which provide the best starch characteristics would have been obvious to one having ordinary skill in the art.

For the following reasons, applicants respectfully traverse the Examiners rejection of claims 6 and 7 as being unpatentable over Higgins.

Claim 7 has been canceled. Claim 6 indirectly depends from new independent claim 27. Higgins was discussed above, those arguments being incorporated herein. As noted above, Higgins does not teach or suggest the **co-processed** starch/flour composition of the presently claimed invention. Higgins further does not teach or suggest a co-processed starch/flour particle having the claimed moisture content of the present invention. Therefore, as Higgins does not teach or suggest the co-processed starch/flour composition of the present invention, it would not have been obvious to one skilled in the art to use a stabilized waxy starch in the co-processed starch/flour particle of the present invention.

It is believed that these remarks overcome the Examiner's rejection of claims 6 and 7 as being unpatentable over Higgins under 35 U.S.C. § 103(a). Withdrawal of the rejection is respectfully requested.

#### **Reply to the Rejection of Claims 13-18 and 22 under 35 U.S.C. § 103(a)**

The Examiner has rejected claims 13-18 and 22 as being unpatentable over U.S. Patent No. 5,849,351 to Higgins *et al.* ("Higgins") in combination with U.S. Patent No. 6,221,420 to Thomas *et al.* ("Thomas"). Specifically, the Examiner states –

Higgins '351 teach a co-processed modified starch and flour composition. The starch and flour composition is used as an aqueous coating or can be used in a batter.

Higgins '351 does not per se teach that the co-processed modified starch and flour can be used as thickener in foods such as brown sauces and tomato based sauces. As discussed above, the co-processed modified starch and flour would inherently

provided thickening properties and therefore can be used in foods or products requiring a thickener.

Thomas et al. teaches foods, which contain thermally inhibited starches and flours, which are used as thickeners. Thomas et al. teach that foods containing the thermally inhibited starches and flours can be used in food products such as fruit based pie fillings, baby foods, tomato based product such as gravies, sauces, soups, stove top cooked foods, puddings pourable and spoonable salad dressings, refrigerated food such as dairy and imitation foods, frozen foods, etc.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a co-processed starch and flour composition of Higgins '351 which is used as a thickener in foods as taught by Thomas et al. because the co-processed starch and flour has been used as a coating and batter for food which has been taught in Higgins'351, Thomas et al. teaches that thermally inhibited starches and flours are used as thickeners and viscosifiers in foods such as sauces, gravies, salad dressings, refrigerated and frozen foods as well as used in batter and coatings for foods thus providing an equivalent function for using starches and flours in foods thus to use the co-processed modified starch and flour in foods such as tomato based sauces and brown sauces/gravies renders applicant's invention as a whole obvious to one of ordinary skill in the art.

For the following reasons, applicants respectfully traverse the Examiners rejection of claims 13-18 and 22 as being unpatentable over Higgins in combination with Thomas.

Higgins was discussed above, those arguments being incorporated herein. Thomas discloses foods containing thermally inhibited starches and flours that are functionally equivalent to chemically inhibited (*i.e.*, crosslinked) starches (col. 3, lines 60-67). These thermally inhibited starches or flours can be used in foods for thickening or gelling with or without heating (col. 4, lines 32-33). The starches or flours can be pregelatinized either before or after being thermally inhibited (col. 3, lines 36-39). The starches can also be chemically modified and subsequently thermally inhibited (col. 4, lines 53-56). Thomas further teaches that mixtures of thermally inhibited starches or flours can be used in foods (col. 4, lines 42-45). The thermally inhibited starches or flours can also be blended with other unmodified or modified starches or with other food ingredients before use in a food product (col. 9, lines 1-5).

Still, Thomas does not teach or suggest a co-processed starch/flour composition. Further, Thomas does not teach or suggest a co-processed starch/flour composition having a moisture content of about 3% to about 12% by weight. Accordingly, Thomas alone or in combination with Higgins does not teach or suggest the presently claimed composition, nor do the references teach or suggest the process for preparing the co-processed composition.

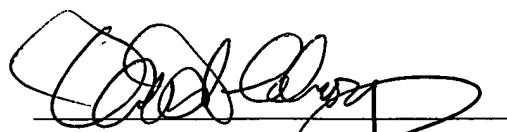
Finally, claims 13-18 and 22 have been canceled. Accordingly, the Examiner's rejection of claims 13-18 and 22 as being unpatentable over Higgins in combination with Thomas under 35 U.S.C. § 103(a) is now moot.

Based on the above amendments and remarks, allowance of the claims is believed to be in order, and such allowance is respectfully requested.

Respectfully submitted,

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